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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**  
9

10 United States of America,  
11 Plaintiff,  
12 v.  
13 William Joel Serna,  
14 Defendant.  
15

No. CR-22-01651-001-TUC-RM (DTF)

**ORDER**

16 Pending before the Court are (1) Defendant Serna's First Motion to Suppress  
17 404(b) Evidence (Doc. 58)<sup>1</sup>; (2) Defendant's First Motion to Suppress Evidence  
18 (Reasonable Suspicion) (Doc. 59); and (3) Defendant's Motion to Sever Count 2 (Doc.  
19 67). For the following reasons, the Motion to Suppress Evidence (Reasonable Suspicion)  
20 and the Motion to Suppress 404(b) Evidence will be granted, and the Motion to Sever  
21 Count 2 denied as moot.

22 **I. Background<sup>2</sup>**

23 Defendant was indicted on July 27, 2022 on four counts of Transportation of  
24 Illegal Aliens for Profit and one count of Conspiracy to Transport Illegal Aliens for  
25

26 <sup>1</sup> At the evidentiary hearing (EH) on January 11, 2023, defense counsel orally converted  
the Motion to a Motion to Suppress, since the evidence contained therein is no longer  
404(b) evidence but substantive evidence against the Defendant. (EH at 1-2, 20-21.)

27 <sup>2</sup> At the EH, Agent Owens and Officer Resendiz testified to the facts set forth herein.  
28 The relevant portions of the hearing transcript will be cited to as "EH." The briefing also  
contains relevant factual background of the events underlying the Indictment, as set forth  
herein.

1 Profit. (Doc. 23.) On January 4, 2023, the Government filed a Superseding Indictment  
2 adding one count of Possession of a Firearm and Ammunition by a Convicted Felon.  
3 (Doc. 65.) The Indictment is based on the following events, which the parties do not  
4 substantially dispute.

5 On May 26, 2022, Border Patrol Agent Charles Owens (“Agent Owens”) stopped  
6 the Defendant around 7:30 a.m. while the Defendant was traveling on State Route 90 near  
7 Huachuca City in southern Arizona. (Doc. 62.; EH at 9-12.) The Defendant was driving a  
8 blue Volkswagen Tiguan. (*Id.* at 2.; EH at 14.) Agent Owens noted the driver was  
9 “clutching” the wheel and did not look at Agent Owens as he passed. (*Id.*; EH at 12-13,  
10 30-36.) However, Agent Owens did see the driver’s eyes opening wide. (EH at 32, 33.)  
11 Agent Owens noted that the vehicle was dirty, as though it had been out in the desert, had  
12 scratches along the sides, and had a temporary registration tag registered to the Phoenix  
13 area. (*Id.*; EH at 14-18, 37-39, 42-43.) As Agent Owens followed the vehicle, he saw it  
14 cross the centerline of the road, as though the driver was observing him in the rearview  
15 mirror, and then switch lanes, making a “hard swerve” into the right lane. (*Id.*; EH at 16-  
16 17, 48-50.) Agent Owens testified that, after following the vehicle for approximately  
17 seven miles, he initiated a traffic stop based on his suspicion that the vehicle was  
18 involved in alien smuggling. (*Id.*; EH at 18-19.) He testified that his suspicion was based  
19 on the dirt and scratches on the car, the driver’s “nervous” appearance and demeanor, the  
20 driver’s lane change as Owens followed him, the temporary registration tag, the early  
21 morning hour, and the location of the vehicle in a known human trafficking area. (*Id.* at  
22 3.; EH at 10-19, 53-54.) However, although the area is known for trafficking, it is well-  
23 traveled by hundreds, if not thousands, of people every day. (EH at 27, 28.)

24 Upon contacting the Defendant and the vehicle’s three occupants, Agent Owens  
25 asked the two Hispanic males seated in the backseat their citizenship status. (*Id.* at 3.; EH  
26 at 19-20.) Both stated that they were Mexican citizens illegally in the United States. (*Id.*)  
27 Defendant and the other occupants were taken into custody; Border Patrol agents found  
28 narcotics on Defendant’s person and in the vehicle and a loaded pistol underneath the

1 driver's seat. (*Id.*; EH at 20.) After reading Defendant his Miranda rights, Owens asked  
2 him why he was smuggling non-citizens, and Defendant responded, "I am homeless and  
3 need the money." (*Id.*; EH at 21.) The third occupant, who was a U.S. citizen, stated that  
4 she and Defendant had left Glendale at 1:00 that morning to pick up the aliens, who had  
5 come "out of the bush." (*Id.*) Border Patrol did not arrest the Defendant, and the gun and  
6 drug evidence were turned over to the Department of Public Safety (DPS). (*Id.*)

7 On July 2, 2022, Douglas Police Officer Javier Resendiz ("Officer Resendiz" or  
8 "Resendiz") was on routine patrol in Douglas, Arizona, a town on the border of Arizona  
9 and Mexico, when he observed Defendant driving a white Volkswagen hatchback with  
10 California plates. (Doc. 63 at 2; EH at 59-60.) Officer Resendiz testified that he had  
11 observed the same vehicle driving in and near Douglas on three occasions in the weeks  
12 prior to July 2. (*Id.*; EH at 60-63.) On one of those prior occasions he ran the vehicle's  
13 license plate, which returned to a car rental company, but did not contact the vehicle. (EH  
14 at 60.)

15 Due to having seen the vehicle on prior occasions, Officer Resendiz decided to  
16 follow it on July 2. (*Id.*; EH at 65.) On that day, Resendiz observed the vehicle driving  
17 through Douglas at 4:30 a.m. with several occupants. (*Id.* at 2-3.; EH at 64-65.) Officer  
18 Resendiz saw the Volkswagen turn into a Speedway gas station and park next to a gas  
19 pump without any prompting or indication from Officer Resendiz. (*Id.*; EH at 67-68.) The  
20 parties agree that Resendiz did not initiate a stop and that Defendant pulled into the gas  
21 station of his own accord. Officer Resendiz testified that he did not observe anything  
22 about the behavior of the vehicle that would have constituted an infraction for which he  
23 could have initiated a traffic stop. (EH at 88-89.)

24 Officer Resendiz then parked behind Defendant at another pump, facing the  
25 opposite direction. (*Id.*; EH at 72.) The officer's vehicle did not block Defendant's  
26 vehicle from leaving. (*Id.*; EH at 72.) Resendiz approached Defendant's vehicle and  
27 initiated a conversation with him. (*Id.*; EH at 72-74.) Resendiz noticed that the vehicle's  
28 four occupants were Hispanic males dressed in dark clothing who did not acknowledge

1 Resendiz's presence. (*Id.*; EH at 73, 75.) Officer Resendiz requested Border Patrol  
2 assistance through dispatch. (*Id.*; EH at 76.)<sup>3</sup>

3 Officer Resendiz conversed with Defendant about Defendant's business and his  
4 family members in Mexico. (*Id.*; EH at 74.) When Resendiz attempted to converse with  
5 the vehicle's occupants, they did not respond. (*Id.*; EH at 75.) Shortly into the  
6 conversation, Resendiz asked to see Defendant's driver's license in order to confirm his  
7 identity and "let dispatch know who [he] was talking to." (*Id.* at 3-4.; EH at 76-77.)  
8 Defendant voluntarily provided his license. (*Id.* at 4.) Officer Resendiz ran Defendant's  
9 license through dispatch at 4:41 a.m. and was informed that it was cancelled. (*Id.*; EH at  
10 78.) Resendiz testified that he did not recall whether he stepped away from Defendant's  
11 vehicle while making the records check call to dispatch. (EH at 77.)

12 Resendiz's testimony was unclear as to exactly when or whether he returned  
13 Defendant's driver's license to him. (EH at 91-99.) He did testify that Defendant could  
14 not drive away without his license and that he could have asked for it. (EH at 92.) Officer  
15 Resendiz testified that he returned Defendant's license to him but did not remember  
16 actually doing so. (EH at 93.) Resendiz testified that he would have allowed Defendant to  
17 drive away with a cancelled license, stating, "It's his choice." (EH at 91-93.) However,  
18 he also testified that Defendant could not technically leave without his license. (EH at  
19 99.) Resendiz testified that he would have had no reason to retain the license, despite it  
20 being cancelled. (EH at 93.) He testified that he could have issued Defendant a citation  
21 for driving with a cancelled license but did not take steps to do so. (EH at 95-96.)  
22 Whether Resendiz returned Defendant's license was not included in his police report.  
23 (EH at 93-94.)

24 When Officer Resendiz informed Defendant that his license was cancelled,  
25 Defendant became argumentative. (*Id.*; EH at 78-79.) Defendant insisted that his license  
26 was not cancelled, and proceeded to call Douglas Police dispatch, as well as Phoenix  
27 Police dispatch, in an effort to confirm the validity of the license. (*Id.*; EH at 78.) Officer

28 <sup>3</sup> Resendiz was unable to provide the exact time he requested Border Patrol assistance,  
but dispatch records indicate that Border Patrol was en route at 4:43 a.m. (Doc. 63 at 3.)

1 Resendiz asked the vehicle's occupants if any of them had a license and could drive the  
2 vehicle. (*Id.*; EH at 80.) Defendant stated that none of them had licenses. (*Id.*; EH at 80.)  
3 At approximately 5:00 a.m., the first Border Patrol agent, Tyler Jones, arrived. (*Id.*; EH at  
4 80-81.) Agent Jones asked the vehicle's occupants their citizenship status, and they  
5 responded that they were Mexican citizens illegally in the United States. (*Id.*) Defendant  
6 asked to talk to Jones's supervisor. (*Id.*) Border Patrol Supervisor Art Nuila then arrived.  
7 (*Id.*) Agent Nuila then asked the passengers about their citizenship status; Defendant  
8 stated that because the passengers had passports, Nuila could not talk to them. (*Id.* at 4-  
9 5.) Agent Nuila confirmed with the passengers that they were in the United States  
10 illegally. (*Id.* at 5.) Nuila then asked Defendant to exit his vehicle and informed him he  
11 was being arrested for alien smuggling. (*Id.*) Defendant continued to insist that the  
12 passengers had passports. (*Id.*)

## 13 **II. Motion to Suppress Evidence from May 26, 2022 Stop**

14 Defendant moves to suppress all evidence obtained as a result of the May 26, 2022  
15 stop by Agent Owens. (Doc. 58.) Defendant contends that the stop was an illegal seizure  
16 in violation of the Fourth Amendment because it was not supported by reasonable  
17 suspicion. (*Id.* at 2-4.) Defendant argues that there was no particularized and objective  
18 basis for stopping him because (1) State Route 90 is a heavily trafficked road that is not  
19 near the border; (2) nothing about Defendant's driving behavior, including the lack of eye  
20 contact and the lane switch, was erratic or evasive; and (3) neither the dirt on the vehicle,  
21 the type of vehicle, nor the number of occupants, supported reasonable suspicion for alien  
22 smuggling. (*Id.* at 4-5.) Defendant argues that, even viewing the circumstances with  
23 deference to Agent Owens' interpretation of the facts, his inferences were not objectively  
24 reasonable and did not rise to reasonable suspicion. (*Id.* at 5.)

25 In response, the Government contends that the May 26 stop was supported by  
26 reasonable suspicion. (Doc. 62.) The Government contends that (1) the location of the  
27 stop, on State Route 90 near Huachuca City, is in a corridor known for alien smuggling,  
28 and the vehicle was near the border ; (2) the vehicle's occupants' behavior of not looking

1 at Agent Owens, the erratic driving behavior, and the dirt on the vehicle all support  
 2 reasonable suspicion; and (3) the vehicle's temporary tag registered to Glendale, and the  
 3 high percentage of vehicles engaged in alien smuggling that are registered to the Phoenix  
 4 metropolitan area, supports reasonable suspicion. (*Id.* at 4-6.)

#### 5 **A. Applicable Law**

6 “The Fourth Amendment prohibits unreasonable searches and seizures by the  
 7 Government, and its protections extend to brief investigatory stops of persons or vehicles  
 8 that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002)  
 9 (internal citations omitted). “Because the ‘balance between the public interest and the  
 10 individual's right to personal security,’ tilts in favor of a standard less than probable cause  
 11 in such cases, the Fourth Amendment is satisfied if the officer's action is supported by  
 12 reasonable suspicion to believe that criminal activity “‘may be afoot[.]’” *Id.* (citing  
 13 *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)); *United States v. Sokolow*,  
 14 490 U.S. 1, 7 (1989)); *see also United States v. Cortez*, 449 U.S. 411, 417 (1981) (“An  
 15 investigatory stop must be justified by some objective manifestation that the person  
 16 stopped is, or is about to be, engaged in criminal activity.”). Reasonable suspicion is “a  
 17 particularized and objective basis for suspecting the particular person stopped of criminal  
 18 activity.” *United States v. Valdes-Vega*, 783 F.3d 1074, 1078 (9<sup>th</sup> Cir. 2013.)

19 “When discussing how reviewing courts should make reasonable-suspicion  
 20 determinations, we have said repeatedly that they must look at the ‘totality of the  
 21 circumstances’ of each case to see whether the detaining officer has a ‘particularized and  
 22 objective basis’ for suspecting legal wrongdoing.” *Arvizu*, 534 U.S. at 273 (citing *Cortez*,  
 23 449 U.S. at 417-18). “This process allows officers to draw on their own experience and  
 24 specialized training to make inferences from and deductions about the cumulative  
 25 information available to them that ‘might well elude an untrained person.’” *Id.* “Although  
 26 an officer's reliance on a mere hunch is insufficient to justify a stop, the likelihood of  
 27 criminal activity need not rise to the level required for probable cause[.]” *Id.* at 274. “[I]n  
 28 justifying [a] particular intrusion the police officer must be able to point to specific and

1 articulable facts which, taken together with rational inferences from those facts,  
2 reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

3 For stops related to suspected border crimes, the Ninth Circuit has set forth a non-  
4 determinative list of factors for courts to consider in determining whether the totality of  
5 the circumstances supports reasonable suspicion: (1) the characteristics of the area where  
6 the vehicle is encountered; (2) the vehicle’s proximity to the border; (3) traffic patterns  
7 and experience with previous illegal border crossings in the area; (4) whether certain  
8 types of vehicles are known to transport undocumented persons; (5) erratic driving  
9 behavior or attempts to evade law enforcement; and (6) whether the vehicle appears to be  
10 heavily loaded or have an unusual number or passengers. *United States v. Brignoni-*  
11 *Ponce*, 422 U.S. 873, 885 (1975). “[E]ven when factors considered in isolation from each  
12 other are susceptible to an innocent explanation, they may collectively amount to a  
13 reasonable suspicion.” *United States v. Berber-Tinoco*, 510 F.3d 1083, 1087 (9th Cir.  
14 2007). Courts may not adopt a ““divide-and-conquer analysis”” by looking at each factor  
15 in isolation and according it no weight if it is susceptible to an innocent explanation.” *Id.*  
16 at 1088. Not every factor must be present in every case to justify reasonable suspicion,  
17 and “facts must be filtered through the lens of the agents’ training and experience.”  
18 *Valdes-Vega*, 738 F.3d at 1079. “If the initial stop was unconstitutional, then all evidence  
19 seized as a result of the stop must be suppressed as the fruit of the poisonous tree.”  
20 *United States v. Morales*, 252 F.3d 1070, 1073 (9<sup>th</sup> Cir. 2001) (internal citation omitted).

## 21 **B. Analysis**

22 The Court has reviewed in detail the parties’ briefing on this matter, the testimony  
23 and arguments of the January 11, 2023 evidentiary hearing, and the relevant case law.  
24 Having considered the totality of the circumstances of the May 26, 2022 stop, the Court  
25 finds that the evidence obtained as a result of the stop of Defendant on State Route 90  
26 must be suppressed because the stop was not supported by reasonable suspicion.

27 State Route 90 is a heavily trafficked road that connects the cities of Sierra Vista  
28 and Huachuca City to Interstate 10, and a vehicle travelling on this road cannot be said to



1 be in an area known for alien smuggling. Nor was the location of Defendant's vehicle  
2 approximately 30-40 miles from the border "in proximity" to the border. The behavior of  
3 the occupants and the driver of not looking at, widening their eyes, or failing to make eye  
4 contact with, Agent Owens, cannot be said to add to the reasonable suspicion analysis in  
5 any way. Likewise with the driver's lane change as Agent Owens came up behind him;  
6 there is nothing suspicious about an individual viewing an approaching vehicle in his  
7 rearview mirror and then switching to the right lane to allow it to pass. The dirt on the  
8 vehicle also does not add to the reasonable suspicion analysis, as a vehicle in an area  
9 dominated by desert and unpaved roads could be dirty for any number of reasons  
10 unrelated to smuggling undocumented persons. Lastly, the vehicle's temporary tag  
11 registered to Glendale is not unusual in southern Arizona and does not add to the  
12 reasonable suspicion analysis to compel the Court to reach a different conclusion.  
13 Accordingly, viewing the totality of the circumstances surrounding the May 26 stop, the  
14 Court finds that it was not supported by a particularized and objective basis for  
15 suspecting Serna of criminal activity, and that the evidence obtained therefrom must be  
16 suppressed.

### 17 **III. Motion to Suppress Evidence (Reasonable Suspicion)**

18 Defendant moves to suppress all evidence obtained as a result of what he  
19 characterizes as Officer Resendiz's unlawful detention of Defendant on July 2. (Doc. 59.)  
20 Defendant argues that, once Officer Resendiz took his driver's license and ran a records  
21 check, he was not free to leave, and a detention occurred that was not supported by  
22 reasonable suspicion. (*Id.*) Defendant concedes that the initial encounter was consensual.  
23 (*Id.*) However, he contends that, when Officer Resendiz retained control of his driver's  
24 license and ran a records check, he was no longer free to depart and thus that act  
25 converted the initially consensual encounter into a detention or arrest within the meaning  
26 of the Fourth Amendment. (*Id.*) Defendant cites to cases finding that an officer's  
27 retention of an individual's documents and/or identification, without a specific reason for  
28 doing so, constitutes a seizure. (*Id.*) Defendant argues that when Officer Resendiz took



1 possession of Defendant's driver's license for the alleged purpose of confirming his  
2 identity, kept the license while obtaining a records check from dispatch, and then retained  
3 the license for an unknown or indefinite period of time, a reasonable person would not  
4 believe he was free to depart. (*Id.*)

5 Defendant further argues that no reasonable suspicion supported the detention that  
6 occurred when Officer Resendiz ran a records check on Defendant's license. (*Id.*)  
7 Defendant argues that Officer Resendiz's observations that the Defendant turned into the  
8 Speedway gas station, that he appeared nervous, and that the vehicle contained four  
9 passengers who did not make eye contact or communicate, collectively do not provide a  
10 particularized and objective basis for reasonable suspicion of criminal activity. (*Id.*)  
11 Defendant argues that, had Officer Resendiz had reasonable suspicion leading up to the  
12 consensual encounter at the gas station, he would have conducted a traffic stop. (*Id.*)  
13 However, he never did so, nor did he place Defendant under arrest. (*Id.*) Moreover,  
14 Resendiz testified that he lacked reasonable suspicion to initiate a traffic stop. (*Id.*)  
15 Defendant further contends that his apparent "nervousness" and presence at the gas  
16 station in Douglas are not sufficient to support reasonable suspicion, because such a  
17 finding would subject nearly any driver in Douglas to possible detention for criminal  
18 activity. (*Id.*)

19 The Government filed a Response in opposition to the Motion to Suppress. (Doc.  
20 63.) The Government contends that (1) Officer Resendiz had reasonable suspicion to  
21 detain Defendant pending Border Patrol's arrival so that his asking to see and retaining  
22 Defendant's driver's license was inconsequential, and (2) Defendant was not in fact  
23 detained or arrested until Border Patrol arrived and Agent Nuila told Defendant he was  
24 being arrested. (*Id.* at 5.)

25 First, the Government argues that Resendiz had reasonable suspicion to detain  
26 Defendant upon contact based on (1) the vehicle's presence in an area well-known for  
27 alien smuggling; (2) the vehicle's California plates and its registration as a rental car; (3)  
28 Resendiz's observations of the vehicle in Douglas prior to July 2; (4) the early morning

hour;<sup>4</sup> (5) the number of passengers in the vehicle and their appearance and attire; and (6) Defendant's "abrupt" turn into the Speedway gas station. (*Id.* at 6-7.) The Government argues that, because Officer Resendiz could have detained Defendant but did not, and instead kept the encounter consensual, there was no constitutional violation in running Defendant's driver's license. (*Id.* at 8.) The Government contends that, because Resendiz made no show of force or exercise of authority to indicate to Defendant that he was not free to leave, no detention occurred. (*Id.* at 8-9.) The Government argues that relevant precedent supports a finding that Resendiz was permitted to request, but not require, Defendant's identification without converting the consensual encounter into a detention. (*Id.* at 10.) The Government notes that, in the cases cited by Defendant, the police officer took an extra step of indicating to the defendants that they were not free to leave by showing authority or force or explicitly instructing the defendants to remain. (*Id.* at 10-11.) The Government contends that because Resendiz made no such show of force or authority, his request for and retention of Defendant's license, and running a records check, did not amount to a detention. (*Id.*)

#### **A. Applicable Law**

"[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Florida v. Bostick*, 501 U.S. 429, 434–35 (1991). "So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." *Id.* (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991)). An encounter does "not trigger Fourth Amendment scrutiny unless it loses its consensual nature." *Id.*; *see also Terry*, 392 U.S. at 19, n.16. "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual's identification, and request consent to search his or her luggage—as long as the police do not convey a message that compliance with their requests is required." *Bostick*, 501 U.S. at 434–35 (citing *INS v. Delgado*, 466 U.S. 210, 216 (1984) (internal

<sup>4</sup> Officer Resendiz testified at the evidentiary hearing that the early morning hour was "irrelevant" to his decision to follow Defendant's vehicle.

1 citations omitted).

2 “Only when the officer, by means of physical force or show of authority, has  
3 restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”  
4 *Delgado*, 466 U.S. at 215 (internal citation omitted). “[T]he protection against  
5 unreasonable seizures also extends to ‘seizures that involve only a brief detention short of  
6 traditional arrest.’” *Id.* (citing *Brignoni-Ponce*, 422 U.S. at 878). “[A]n initially  
7 consensual encounter between a police officer and a citizen can be transformed into a  
8 seizure or detention within the meaning of the Fourth Amendment, ‘if, in view of all the  
9 circumstances surrounding the incident, a reasonable person would have believed that he  
10 was not free to leave.’” *Id.* (citing *United States v. Mendenhall*, 446 U.S. 544, 554  
11 (1980)). An individual “may not be detained *even momentarily* without reasonable,  
12 objective grounds for doing so[.]” *Florida v. Royer*, 460 U.S. 491, 498 (1983) (emphasis  
13 added).

14 “When a law enforcement official retains control of a person's identification  
15 papers, such as vehicle registration documents or a driver's license, longer than necessary  
16 to ascertain that everything is in order, and initiates further inquiry while holding on to  
17 the needed papers, a reasonable person would not feel free to depart.” *United States v.*  
18 *Chan-Jimenez*, 125 F.3d 1324, 1326 (9th Cir. 1997); *see also United States v. Lambert*,  
19 46 F.3d 1064, 1068-69 (10th Cir. 1995) (consensual encounter converted to investigative  
20 detention when agents received the defendant’s license and did not return it to him). An  
21 individual is seized within the meaning of the Fourth Amendment when an officer  
22 obtains and fails to return his driver’s license and proceeds with an investigation. *Chan-*  
23 *Jimenez*, 125 F.3d at 1326. Such an action manifests an intent to restrain the individual’s  
24 freedom, since he cannot “lawfully drive away without the documents.” *Id.*

25 Where an officer retains an individual’s driver’s license for longer than necessary  
26 in order to confirm his identity, instructs him to remain by his vehicle while running a  
27 warrant check, and then takes the license back to his patrol car, a seizure within the  
28 meaning of the Fourth Amendment has occurred because no reasonable person would

1 feel free to leave. *United States v. Lopez*, 443 F.3d 1280, 1286 (10th Cir. 2006). Where  
 2 an officer does not have probable cause or reasonable articulable suspicion to detain an  
 3 individual until the warrant check was completed, the seizure violates the Fourth  
 4 Amendment. *Id.*; see also *United States v. Martinez*, 203 F. App'x 757, 758 (9th Cir.  
 5 2006) (where officer testified at suppression hearing that he had no suspicion the  
 6 defendant had engaged or was about to engage in criminal activity, the investigatory stop,  
 7 which included retaining the defendant's identification and conducting a warrant check,  
 8 violated the Fourth Amendment).

9 “A seizure ‘becomes unlawful if it is prolonged beyond the time reasonably  
 10 required to complete the mission’ of issuing a ticket for the violation.” *Rodriguez v.*  
 11 *United States*, 575 U.S. 348, 350–51 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405,  
 12 407 (2005)). Once an individual has been seized, the Fourth Amendment requires that  
 13 “the length and scope of the detention be strictly tied to and justified by the  
 14 circumstances which rendered its initiation permissible.” *United States v. Contreras-*  
 15 *Diaz*, 575 F.2d 740, 744 (9th Cir. 1978) (citing *Terry*, 392 U.S. at 19). “This standard  
 16 permits a police officer to detain an individual stopped for [a crime] only the time  
 17 necessary to obtain satisfactory identification from the violator and to execute a traffic  
 18 citation.” *Id.* Where the police officer completes these functions but continues to detain a  
 19 defendant for the purpose of running a warrant check, without “reasonable grounds to be  
 20 suspicious that there might be a warrant outstanding against him,” the “continued  
 21 detention is unreasonable” and its fruits are properly suppressed. *Id.*

## 22 **B. Applicable Law**

23 Considering the totality of the circumstances, the Court finds that Officer Resendiz  
 24 detained Defendant without reasonable suspicion when he obtained Defendant's driver's  
 25 license, ran a records check on the license, and then possibly failed to return it. Because  
 26 this detention occurred without reasonable suspicion within the meaning of the Fourth  
 27 Amendment, all evidence following from it must be suppressed.

28 As an initial matter, Officer Resendiz testified that he began to follow Defendant's

1 vehicle only because he had seen it multiple times in the preceding weeks. He testified  
2 that he lacked reasonable suspicion to conduct a traffic stop and that the vehicle did  
3 nothing that would have created reasonable suspicion for a stop. Furthermore, the parties  
4 agree that Officer Resendiz did not, in fact, stop Defendant's vehicle, and that the  
5 encounter between them that took place at the gas station was, at least up to a certain  
6 point, consensual. Because Officer Resendiz did not point to "specific and articulable  
7 facts" and accompanying "rational inferences" that would have supported a stop, nor did  
8 he articulate a "particularized and objective basis" for initiating a stop, the Court finds  
9 that no reasonable suspicion motivated Officer Resendiz's initial encounter with  
10 Defendant.

11 Although the Government argues to the contrary, contending that Resendiz had  
12 reasonable suspicion to stop the vehicle based on numerous factors (*see supra* at 6), the  
13 Court need not speculate about what a reasonable officer in Resendiz's position would  
14 have thought or done upon observing Defendant's vehicle. Resendiz testified that he did  
15 not have any reasonable suspicion for a traffic stop and followed the vehicle only because  
16 he had seen it before, and possibly because it had out-of-state plates registered to a rental  
17 car company. These facts alone do not constitute reasonable suspicion for a stop, even if  
18 using rental cars is a known tactic of alien smugglers. Resendiz did not testify that he  
19 developed reasonable suspicion that Defendant was engaging in alien smuggling or any  
20 other crime during the encounter—rather, he simply radioed for Border Patrol,  
21 presumably to allow the Border Patrol agents to investigate whether alien smuggling was  
22 occurring.

23 While awaiting Border Patrol's arrival, however, Officer Resendiz subjected  
24 Defendant to an unconstitutional seizure when he retained his driver's license to run a  
25 records check. Just like the defendants in *Chan-Jimenez*, *Lambert*, *Lopez*, and *Martinez*,  
26 Serna was detained within the meaning of the Fourth Amendment when Resendiz took  
27 his license and ran a records check on it. Those four cases unambiguously conclude that a  
28 consensual encounter is converted to a detention when an officer takes an individual's

1 license and retains it to run a records or warrant check without reasonable suspicion of a  
2 traffic violation or outstanding warrants. The Court agrees with the reasoning and  
3 application of the law as set forth in those cases. A reasonable person would not feel free  
4 to leave while a police officer was holding or retaining his driver's license. *See Chan-*  
5 *Jimenez*, 125 F.3d at 1326.

6 Here, Resendiz testified that he requested Serna's driver's license in order to  
7 confirm his identity. Resendiz could have done this by simply looking at the license and  
8 asking Serna to confirm his name and address. Had Resendiz done this and then  
9 immediately returned the license, no detention would have occurred. However, when  
10 Resendiz held the license and ran a records check on it, without reasonable suspicion to  
11 suspect Serna of a crime, the consensual encounter was converted into a detention. Of  
12 further import is Resendiz's testimony that he could not recall whether he stepped away  
13 from Serna's vehicle when he called dispatch to run the records check, or when exactly  
14 he returned the license to Serna. In light of this testimony and the facts as briefed by the  
15 parties, the Court concludes that Resendiz unlawfully detained Serna when he retained  
16 the license long enough to run the records check, and then for an indefinite amount of  
17 time beyond that. The fact that the results of the records check indicated that Serna's  
18 license was cancelled do not change the analysis because Resendiz lacked reasonable  
19 suspicion to run the check in the first place.

20 Furthermore, the results of the unconstitutional records check prolonged the  
21 detention in a way that further violated the Fourth Amendment. Resendiz testified that he  
22 did not write Serna a ticket for a cancelled license or begin taking steps to do so. If  
23 Resendiz did not intend to issue Defendant a citation for his cancelled license, he should  
24 have immediately returned the license and informed him that he was free to leave.  
25 According to the testimony, that is not what happened. To the extent that Resendiz  
26 retained Serna's license beyond the time necessary to complete whatever official business  
27 Resendiz intended—which, according to him, did not include issuing Serna a citation—  
28 an unconstitutional detention occurred. Furthermore, the detention was unconstitutionally

1 prolonged until Border Patrol arrived on the scene. For these reasons, the Motion to  
2 Suppress will be granted, and the evidence obtained as a result of the unlawful detention,  
3 including Border Patrol's arrest of Defendant, suppressed.

4 **C. Motion to Sever**

5 On January 4, 2023, the Government filed a Superseding Indictment, adding one  
6 count of Possession of a Firearm and Ammunition by a Convicted Felon, based on the  
7 events of May 26, 2022. (Doc. 65.) Defendant filed a Motion to Sever Count Two of the  
8 Superseding Indictment. (Doc. 67.) Defendant requests that Count Two be severed  
9 because its inclusion would prejudice Defendant. (*Id.*) As the Motions to Suppress will be  
10 granted, the Motion to Sever has become moot and will be denied.

11 Accordingly,


12 **IT IS ORDERED** that the First Motion to Suppress 404(b) Evidence (Doc. 58) is  
13 **granted**.

14 **IT IS FURTHER ORDERED** that the First Motion to Suppress Evidence  
15 (Reasonable Suspicion) (Doc. 59) is **granted**.

16 **IT IS FURTHER ORDERED** that Defendant's Motion to Sever Count 2 (Doc.  
17 67) is **denied as moot**.

18 Dated this 10<sup>th</sup> day of February, 2023.

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Honorable Rosemary Márquez  
United States District Judge